

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-12448GAO

GMAC MORTGAGE CORPORATION,
Plaintiff,

vs.

JEFFREY L. BAYKO, SR., LISA J.
BAYKO, HELEN E. BAYKO,
MICHAEL J. BAYKO, BANKNORTH
GROUP, HANS R. HAILEY, CHARLES
D. ROTONDI, COMMONWEALTH OF
MASSACHUSETTS DEPARTMENT
OF REVENUE, THE UNITED STATES
OF AMERICA, GARY EVANS,
CHRISTINE ANN FARO, AND JOHN
AQUINO,
Defendants.

**BANKNORTH, N.A.'S MOTION FOR
SUMMARY JUDGMENT**

Defendant, BANKNORTH, N.A., ("Banknorth"), moves for summary judgment, pursuant to Federal Rules of Civil Procedure 56, in its favor on its claim to the Interpleaded funds, which are the subject of the above-captioned action.

The undisputed facts demonstrate that Banknorth is the holder of a second Mortgage dated April 18, 1997 and recorded on April 24, 1997 in the Essex County Registry of Deeds at Book 14068, Page 475 in the original amount of \$15,000.00. The mortgage was secured by property located at 7A Graham Avenue, Newbury, Massachusetts ("Property").

It is uncontested that Plaintiff, GMAC, foreclosed on the Property on March 12, 2004 by public auction. After satisfaction of the first Mortgagee with GMAC, there were excess sale proceeds in the stated amount of \$186,742.59. As of the date of the foreclosure, Banknorth was

owed \$16,156.25, which it is entitled to by virtue of its second Mortgage and priority position over junior Lienholders on record. It is uncontested that Banknorth's Mortgage has priority over the remaining lienholders on the Property, by virtue of being in senior position at the Registry at the time of foreclosure upon the subject property.

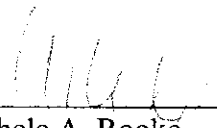
Defendant, Banknorth, has priority over the junior Lienholder by virtue of recording of its Mortgage. (I.R.C §6323 G.L. c. 62C, §50(a).) The excess proceeds from the foreclosure of the first Mortgage are sufficient to pay the amount owed Banknorth as of the date of the foreclosure. There is no basis in law or equity that would entitle the holder of any junior lien to any of the proceeds owed by Banknorth by virtue of its priority position as Mortgagee on the Property.

WHEREFORE, Defendant, Banknorth, moves that it be granted Summary Judgment in the amount of \$16,156.25, in accordance with Mass.R.Civ.P. 56; and attorney's fees, costs and other relief deemed appropriate.

In further support of this Motion, Defendant Banknorth, submits the accompanying Memorandum in Support of Motion for Summary Judgment on behalf of Defendant, Banknorth, with Affidavit and Exhibits.

The Defendant,
BANKNORTH, N.A.,
By its attorney,

Dated: November 29, 2004



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CERTIFICATE OF SERVICE

I, Michele A. Rooke, hereby certify that I served a copy of the foregoing document on the parties to the case by mailing a copy of the same postage prepaid to:

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Newton Highlands, MA 02461-0389**

**Commonwealth of Massachusetts
Department of Revenue
Collections Bureau
P.O. Box 7021
Boston, MA 02204**

**Jeffrey L. Bayko, Sr.
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**The United States of America
Internal Revenue Services
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Dated: November 21, 2004


Michele A. Rooke